



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2011 Biennium

Bill #	HB0502	Title:	Revise fossil fuel development laws
Primary Sponsor:	Phillips, Mike	Status:	As Introduced

- | | | |
|---|---|---|
| <input type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input checked="" type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
Expenditures:				
General Fund	\$41,620	\$41,620	\$0	\$0
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Net Impact-General Fund Balance:	<u>(\$41,620)</u>	<u>(\$41,620)</u>	<u>\$0</u>	<u>\$0</u>

Description of fiscal impact:

HB 502 would establish state ownership of pore space for the purpose of injecting any substance for storage. This legislation will result in the State of Montana developing a new regulatory program to monitor and regulate underground injection of carbon dioxide. The creation of a new program and required permitting of activities associated with sequestration will require special expertise to develop the rules, seek primacy of any adopted federal program and coordinate with other agencies and stakeholders in such development. The Department of Environmental Quality (DEQ) would hire a contractor to perform these duties. Eventually, program staff would be needed to operate this new program. This legislation would also create a state special revenue account with fees and penalties to support the program. The management of the state's ownership of pore space would be the responsibility of the State Board of Land Commissioners, and implemented by the Department of Natural Resources and Conservation (DNRC) through the Trust Land Management Division.

FISCAL ANALYSIS

Assumptions:

Department of Environmental Quality

1. In accordance with new section 3, rule development would follow adoption of federal rules that allow for states to apply for primacy over carbon dioxide sequestration.
2. During the 2011 biennium, rules would be developed, but no program would be operational.

3. During the 2011 biennium, no actual applications for permits would be received. The new federal regulatory program is not yet adopted and no projects have been built.
4. DEQ would hire a contractor for rule development. The estimated cost would be \$83,240, including indirect costs of \$3,240. (\$41,620 each year of the biennium) for 320 hours of research, stakeholder meetings, and development plus 80 hours for amendments and finalization of the administrative rules for a total of 400 hours at \$200 per hour. The \$83,240 would be requested as a biennial appropriation for additional flexibility in the timing of rule development and implementation, including seeking primacy.
5. No fees would be collected during the 2011 biennium.
6. General fund would be requested for the FY 2010 and FY 2011 expenditures. The state special revenue account and fee program would not be established until the rules are written and adopted. Primacy would not be granted until after the rules are completed.
7. For purposes of this fiscal note, it is assumed state primacy or federal implementation of permitting would not take place until FY 2011. The agency would seek funding in the 2013 biennium for program establishment if progress is made and if applications are expected.

	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>	<u>FY 2012 Difference</u>	<u>FY 2013 Difference</u>
<u>Fiscal Impact:</u>				
<u>Expenditures:</u>				
Personal Services	\$0	\$0	\$0	\$0
Operating Expenses	\$41,620	\$41,620	\$0	\$0
TOTAL Expenditures	\$41,620	\$41,620	\$0	\$0
<u>Funding of Expenditures:</u>				
General Fund (01)	\$41,620	\$41,620	\$0	\$0
TOTAL Funding of Exp.	\$41,620	\$41,620	\$0	\$0
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
TOTAL Revenues	\$0	\$0	\$0	\$0
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$41,620)	(\$41,620)	\$0	\$0

Long-Term Impacts:

1. The total cost per year expected for the state program is \$209,993 in FY 2014. This includes \$114,248 in DEQ and \$95,745 in DNRC.

Department of Environmental Quality (DEQ)

2. The earliest that DEQ expects to operate a program is FY 2014 due to the time it will take the Environmental Protection Agency (EPA) to complete its rules.
3. Should those rules allow states to seek primacy for the proposed Class VI separately from the other classes, Montana would apply. If primacy is granted under the EPA program, Montana would expect to operate a program in FY 2014. It is expected that the new program would be organized into an existing bureau, so new management would not be necessary. Due to the highly technical aspects of high-pressure injection wells, a 1.00 FTE (special environmental engineer) would be hired. The 1.00 FTE would cost \$77,682 and operating costs would be \$36,566. This estimate totals \$114,248; however, once primacy is

granted, DEQ will be in a better position to understand how many applications for carbon sequestration are likely and would design a program accordingly.

Department of Natural Resources and Conservation (DNRC)

4. Once this program is established in 2014, management of the state's ownership of pore space would be the responsibility of the State Board of Land Commissioners, and implemented by DNRC through the Trust Land Management Division. Management would require 1.00 FTE civil or petroleum engineer to evaluate and manage the leasing or easement process. The costs of the position would be funded by the general fund, as the state's ownership of pore space would be for the environmental benefit of the general public, and would not be school trust land. The cost of FTE is estimated at \$83,745 for personal services (salary and benefits) and \$12,000 in operating costs, including travel expenses, office space, and one-time only costs for a computer and new employee office package. This totals \$95,745.
5. Revenues generated from leasing or easement agreements would approximately equal the administrative cost of managing the program. Revenues would be distributed to the general fund.
6. Onset of actual leasing activity and development is contingent upon either the state of Montana being granted primacy for regulatory permitting of carbon sequestration wells, or federal government implementation of a regulatory permitting process.
7. The Trust Land Management Division would absorb management and leasing of state school trust pore space with existing staff.

Technical Notes:

1. The justification for state ownership of pore space is based on the environmental benefit of the general public for using geologic sites for carbon dioxide storage. However, Section 10(2)(a) establishes state ownership for injection of any substance for storage. This storage right would include storage of hydrocarbon gas storage.
2. The state ownership of pore space does not include the right to make reasonable use of the surface for the benefit of the general public. Either the state or its lessee would have to obtain permission from the surface owner to occupy the surface to drill wells to utilize the pore space. Refusal by the surface owner to grant permission could prevent the state from developing the pore space for storage. State school trust ownership of the pore space on state lands does include the right to enter upon state land for the purpose of utilizing pore space.
3. Section 18 establishes state school trust ownership of pore space on state lands. The provision is included in an existing statute on state school trust ownership of the mineral estate. Section 11(2) provides that conveyance of private surface estate does not convey pore space. It is unclear whether the state school trust's ownership of pore space is linked to ownership of the surface or mineral estate. The state school trust owns tracts that are full title, mineral estate only, and surface estate only.
4. No rulemaking authority is expressly provided for the Land Board to implement leasing of pore space on school trust lands.
5. The Land Board is prohibited in Section 18 from selling any interest in pore space, but per Section 11 would not acquire an interest in pore space when purchasing or trading for privately owned surface estate.

Sponsor's Initials

Date

Budget Director's Initials

Date

**Dedication of Revenue 2011 Biennium**

- a) **Are there persons or entities that benefit from this dedicated revenue that do not pay? (please explain)**
Yes. Carbon is a global problem. Benefits of any reduction in carbon emissions accrue globally.
- b) **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**
Using a dedicated revenue state special revenue fund makes the fees and related expenses easier to track.
- c) **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended? Yes / No (if no, explain)**
This question is not easily answered at this time. The bill as currently written does not have any fee amounts listed.
- d) **Does the need for this state special revenue provision still exist? ___Yes ___No (Explain)**
N/A
- e) **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please Explain)**
No, it should not affect any of the above.
- f) **Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please Explain)**
Yes. As long as the State of Montana allows carbon sequestration, there will be additional expenses to the State and the fees would need to be set to fully cover the additional expense.
- g) **How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please Explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)**
This additional state special revenue fund should not materially impact accounting/auditing efficiencies.